

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

BILLINGS DIVISION

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DALE E. ULRICH,

CV 13-119-BLG-SEH-CSO

Petitioner,

vs.

FINDINGS AND  
RECOMMENDATION  
OF U.S. MAGISTRATE JUDGE

MARTIN FRINK, Warden,

Respondents.

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On September 13, 2013, Petitioner Dale Ulrich petitioned for a writ of habeas corpus. Ulrich is a state prisoner proceeding pro se.

Ulrich's petition is another in a series of virtually identical petitions received by this Court, alleging that the trial judge should have recused himself after finding probable cause to support the filing of an Information. Ulrich contends that this finding made the judge part of the accusatory process and rendered him unable to be impartial.

It has long been established that prosecution by Information is consistent with the federal guarantee of due process. *Hurtado v. California*, 110 U.S. 516,

538 (1884). A judge who finds probable cause does not take on an investigatory role and does not become aligned with the prosecution any more than does a judge who finds probable cause to issue a search or arrest warrant. Ulrich's argument is frivolous.

As Ulrich does not make a substantial showing of the denial of a constitutional right, 28 U.S.C. § 2253(c)(2), a certificate of appealability should be denied.

Based on the foregoing, the Court enters the following:

### **RECOMMENDATION**

1. The Petition (doc. 1) should be DENIED for lack of merit.
2. A certificate of appealability should be DENIED.
3. The Clerk of Court should be directed to enter, by separate document, a judgment in favor of Respondents and against Petitioner.

### **NOTICE OF RIGHT TO OBJECT TO FINDINGS & RECOMMENDATION AND CONSEQUENCES OF FAILURE TO OBJECT**

Pursuant to 28 U.S.C. § 636(b)(1), Ulrich may serve and file written objections to this Findings and Recommendation within fourteen (14) days of the date entered as indicated on the Notice of Electronic Filing. If Ulrich files objections, he must itemize each factual finding to which objection is made and

must identify the evidence in the record he relies on to contradict that finding; and he must itemize each recommendation to which objection is made and must set forth the authority he relies on to contradict that recommendation. Failure to assert a relevant fact or argument in objection to this Findings and Recommendation may preclude Ulrich from relying on that fact or argument at a later stage of the proceeding. A district judge will make a de novo determination of those portions of the Findings and Recommendation to which objection is made. The district judge may accept, reject, or modify, in whole or in part, the Findings and Recommendation. Failure to timely file written objections may bar a de novo determination by the district judge and/or waive the right to appeal.

Ulrich is cautioned that he must immediately inform the Court of any change in his mailing address. Failure to do so may result in dismissal of this case without notice to him.

DATED this 7th day of October, 2013.

/s/ Carolyn S. Ostby  
United States Magistrate Judge